

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAVONIE AVERYTT,

Petitioner,

v.

WARDEN ORLANDO HARPER, *et al*,

Respondents.

Civil Action No. 2:22-cv-443

Hon. William S. Stickman IV
Hon. Lisa Pupo Lenihan

ORDER OF COURT

AND NOW, this 13 day of June 2022, after Petitioner, Javonie Averytt, filed a Petition for Writ of Habeas Corpus (ECF No. 3), and after a Report and Recommendation was filed by Magistrate Judge Lisa Pupo Lenihan recommending the dismissal of the petition because none of Petitioner's asserted claims were cognizable (ECF No. 4), and having received no objections, the Court hereby ADOPTS Magistrate Judge Lenihan's Report and Recommendation as its Opinion.

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus (ECF No. 3) is DISMISSED WITHOUT PREJUDICE to assert his claims in a properly supported action under 42 U.S.C. § 1983, or a state habeas action.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED because reasonable jurists could not conclude that a basis for appeal exists.¹ Petitioner has failed to

¹ A certificate of appealability may issue only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004). The Court agrees with Magistrate Judge Lenihan that there is no probable cause to issue such a certificate in this action.

allege the denial of a constitutional right that would entitle him to habeas relief, let alone demonstrate a substantial showing of the denial of that right.

AND, IT IS FINALLY ORDERED that, pursuant to Federal Rule of Appellate Procedure 4(a)(1), if Petitioner desires to appeal from this Order, he must do so within thirty (30) days by filing a notice of appeal as provided in Federal Rule of Appellate Procedure 3.

The Clerk is directed to mark this CASE CLOSED.

BY THE COURT:



WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE